THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 11205 of 2006

DATED: 12-06-2006

BETWEEN:

Fishermen Co.op. Society Miryalaguda .. Petitioner

And

The Deputy Director of Fisheries and others

.. Respondents

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 11205 of 2006

ORAL ORDER:

This writ petition is misconceived and therefore dismissed at the stage of admission.

The petitioner is a Fishermen Co-operative Society of Yadgarpalli Tank in Nalgonda District, claimed to be in its area of operation. By the order of the third respondent dated 11.05.2006 lease was granted to the petitioner in respect of the said fishing operations of the said tank up to 30.06.2006. While so, the petitioner asserts that the fourth respondent claiming to have fishing rights in

the said tank on the basis of an agreement said to have been executed by the earlier President of the petitioner society, instituted a suit O.S.No.202 of 2006 on the file of Junior Civil Judge, Miryalaguda and in I.A.No.525 of 2006 obtained an interim injunction restraining the respondent therein from interfering with his possession and enjoyment of the tank. The petitioner is not a party to the suit or to the order of
ad-interim injunction granted on 03.05.2006 in I.A.No.525 of 2006.

The petitioner's grievance is that by virtue of the order of interim injunction aforementioned, the 4th respondent is interfering with the possession and enjoyment of the petitioner society with respect to the fishing rights in the tank. In this writ petition the petitioner seeks declaration that the action of the respondents 1 to 3 in not assisting the petitioner society to conduct the fishing operations is illegal and seeks direction to the respondents 1 to 3 to assist the petitioner society to conduct the fishing operations.

On behalf of the petitioner, it is stated by the learned counsel that the 4th respondent is a member of the petitioner society and any disputes between members of a cooperative society and the society ought to be adjudicated in an arbitral proceedings under Section 61 of the A.P. Cooperative Societies Act, 1964 and the jurisdiction of the Civil Court in respect of such disputes is ousted by the special legislative dispensation under the said Act. It is stated on behalf of the petitioner that the civil Court suffers a patent lack of jurisdiction, therefore, an order of interim injunction granted by such Court patently lacking jurisdiction, cannot operate to deprive the petitioner of its rights and the respondents 1 to 3 are obligated to effectuate the petitioner's rights pursuant to the lease for fishing rights granted by the third respondent on 11.05.2006.

The writ petition is meandering and tortuous course of litigation adopted by the petitioner. Even, if the Junior Civil Judge, Miryalaguda, before which the 4th respondent instituted O.S.No.202 of 2006 and obtained an interim injunction in I.A.No.525 of 2006, has no jurisdiction to adjudicate upon the dispute presented by the 4th respondent in view of the provisions of Section 61 of the A.P. Cooperative Societies Act, 1964 as contended by the petitioner, the proper cause for the petitioner is to file an application for impleadment as a defendant-respondent in the suit and the I.A. and appraise the Civil Court of the legal

position on the jurisdictional aspect and seek vacation of the order of injunction. The petitioner could also have filed a writ of Prohibition-cum-Certiorari assailing the grant of injunction or taking seisin of the suit O.S.No.202 of 2006. It has not chosen any such cause of action and has instead filed this writ petition for directing the respondents 1 to 3 to enforce his fishing rights pursuant to the lease granted by the third respondent on 11.05.2006.

On the aforesaid analysis, the writ petition is misconceived and is accordingly dismissed at the stage of admission. Nothing in this order shall preclude the petitioner from pursuing proper and legitimate remedies.

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GODA RAGHURAM,J

Dated: 12-06-2006

Note: CC as soon as possible

B/o kvrm